D.B. INCOME TAX APPEAL NO.36/2002

DATE OF ORDER : 24.07.2007.

HON'BLE MR. P.B. MAJMUDAR,J.
HON'BLE MR. DEO NARAYAN THANVI,J.

Mr.K.K.Bissa, for the appellant.

The Division Bench of this Court passed following order on 16.2.2004

"On perusal of original memo of appeal, annexures thereof and the additional affidavit along with order dated 30.1.89 passed by the Income Tax Officer u/s 143 (3)/250 giving appeal effect, we find that the order of ITO u/s 154 from which the current appeal arises does not appear to have been placed on record. The order of ITO dated 18.1.90 u/s 154 does not relate itself to controversy dealt with by CIT (A) in his order dated 20.1.94. In the absence of real order under appeal before CIT (A) which in turn has been subject of appeal before the Tribunal, it is not possible to decide the controversy. This position has become clear because of discrepancy in the facts stated in the memo of appeal and the annexures filed along with the appeal and which necessitated making of order dated 12.11.2003. Still, the said order of rectification has not been filed. If the order dated 18.1.90 is the only order then the issue takes different turn.

In view of the aforesaid, the draft order dated 21.10.2003 on file is recalled. The records of assessment for Assessment Year 1985-86 and of appeal before CIT (A) for Assessment year 1985-86 subject matter of order dated 20.1.94 and of ITA No. 700 (JP)/99 for 1985-86 be called for.

This case be listed as soon as the records are received. It be not treated as part-heard. Requisition of record be given 'dasti' to the learned

counsel for the Revenue."

Mr. Bissa submitted that in respect of assessment year in connection with present tax appeal, no order against the Revenue of Revenue is passed by the Commissioner of Income Tax (Appeals) or even by the Tribunal. Mr. Bissa submitted that this appeal has been filed under misconception of facts. He submitted that in that view of the matter since no substantial question of law arises for determination of this Court especially when there is no order against the Department so far as assessment year in question is concerned, for which this appeal is filed and since the Revenue has no grievance so far as present appeal is concerned against the order of the Tribunal, he is not pressing this appeal. The appeal is accordingly disposed of as not pressed. No order as to costs.

(DEO NARAYAN THANVI)J. (P.B.MAJMUDAR)J.

/ss-